

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-080233
	:	TRIAL NO. B-0607675
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
LATINA R. STALLWORTH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following the entry of a guilty plea, defendant appellant, Latina Stallworth, was convicted of endangering children in violation of R.C. 2919.22(A). Stallworth’s live-in boyfriend, Fred Johnson, was convicted of beating her seven-year-old son to death. Stallworth was sentenced to the maximum five-year prison term.

Bringing forth three assignments of error, Stallworth appeals her sentence. For the following reasons, we affirm.

In her first assignment of error, Stallworth argues that the trial court abused its discretion by imposing the maximum sentence.

In reviewing post-*Foster*² sentencing cases, an appellate court must first “examine the sentencing court’s compliance with all applicable rules and statutes in

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.”³ If the sentence is not contrary to law, then the appellate court moves to the next step and reviews the trial court’s decision to impose a term of imprisonment under an abuse-of-discretion standard.⁴

Here, Stallworth argues that the five-year prison term is excessive because (1) she testified against her boyfriend, Fred Johnson, for his part in her son’s death; (2) she displayed symptoms of Battered Women Syndrome; and (3) she does not have any significant criminal history and has never served a prison term.

After a thorough review of the record, including the psychological evaluation and the presentence-investigation report, we hold that Stallworth’s sentence is not clearly and convincingly contrary to law. The sentence imposed was within the applicable statutory range.⁵ Furthermore, we hold that the trial court did not abuse its discretion in imposing the maximum sentence. Although a psychological evaluation indicated that Stallworth displayed signs of Battered Women Syndrome, Stallworth had admitted during the psychological evaluation that she had been aware that Johnson was verbally abusive towards her son and on several occasions had “came onto the end” of incidents where her son had been very upset after being physically reprimanded by Johnson. Furthermore, although she testified against Johnson, the detective in charge of investigating the death of Stallworth’s son said that Stallworth had “lied continuously to the police [and the police] found out she was lying while she was testifying.” Although Stallworth does not have a significant criminal history, that factor is outweighed by the seriousness of this offense.

³ *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶26.

⁴ *Id.*

⁵ R.C. 2929.14(A)(3).

Therefore, given that Stallworth continued to live with her boyfriend after knowing that his level of violence was escalating against her seven-year-old son, we cannot say that the trial court abused its discretion by imposing the maximum sentence of five years. The first assignment of error is overruled.

In her second assignment of error, Stallworth contends that *State v. Foster*,⁶ the Ohio Supreme Court decision that resulted in the severance of the statutory presumption of a minimum sentence for offenders who have never served a prison term, violates the U.S. Constitution. We overrule this assignment of error. “We ‘cannot overrule or modify *Foster*.’ We do not have jurisdiction to declare *Foster* unconstitutional.”⁷

In her third and final assignment of error, Stallworth argues that the rule of lenity required the imposition of a minimum sentence. But we have previously held that sentencing under *Foster* does not violate the rule of lenity in statutory construction.⁸ Accordingly, the third assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 1, 2009
per order of the Court _____.
Presiding Judge

⁶ *Foster*, supra.

⁷ *State v. Bruce*, 170 Ohio App.3d 92, 2007-Ohio-175, 866 N.E.2d 44, ¶6, citing *State v. Newman*, 9th Dist. No. 23038, 2006-Ohio-4082, and *State v. Durbin*, 2nd Dist. No. 2005-CA-134, 2006-Ohio-5125.

⁸ *Bruce*, supra, at ¶13.